

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Not reportable

CASE NO: JS 107/18

In the matter between:

TAKALANI INNOCENT SINGO

Applicant

And

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

First Respondent

**NATIONAL COMMISSIONER OF
CORRECTIONAL SERVICES**

Second Respondent

Heard: 12 February 2019

Judgment delivered: 14 February 2019

JUDGMENT

VAN NIEKERK J

- [1] This is an application for default judgment. The application is opposed by the respondent, who seeks condonation for the late filing of its notice of intention to oppose and answering affidavit.
- [2] On 6 April 2018, the applicant filed a statement of claim. He states that he worked for the respondent from 18 September 2006 until 30 June 2015. The papers disclose that the applicant submitted a letter of resignation, for personal reasons, on 31 May 2015.
- [3] The applicant states that he wishes to be re-employed by the respondent. He avers that during May 2017, the respondent issued a memorandum regarding the re-employment of former members of the respondent and that he felt 'entitled' to the opportunity to apply. He avers further that during August 2017, he sought employment at various regional centres, but to no avail.
- [4] In so far as prior conciliation is concerned, the applicant states that he engaged with the Public Service Commission, and that he lodged a complaint with the presidential hotline. Neither engagement resulted in a resolution of his dispute.
- [5] The applicant seeks re-employment backdated to June 2017, and compensation in the sum of R1.7 million, for what he contends to be an unfair dismissal and unfair labour practice. At the hearing of the application, the applicant abandoned the claim based on unfair dismissal, but pursued what he contended to be an unfair labour practice on the part of the respondent.
- [6] The delay in filing the notice to oppose the default judgment application is explained on the basis of what appears to be a failure by a human resources manager employed by the respondent to receive an email concerning the filing of the application. He states that it was only some 12 months later, when the notice of set down was received, that he became aware of the application. The reliance on what is referred to as 'human error' does not amount to a satisfactory explanation for what is an inordinate delay. But that is not the end of the enquiry.

The applicant's prospects of success must be evaluated and considered with the other relevant factors.

- [7] In my view, the applicant has no prospects of success. First, the Constitutional Court has emphasised a proper referral for conciliation, either to the CCMA or a bargaining council having jurisdiction, prior to the referral of a dispute to this court. The applicant has provided no proof of such a referral – his efforts at conciliation in the form of an approach to the PSC and the presidential hotline do not meet the jurisdictional requirement of prior conciliation. (See *National Union of Metalworkers of SA v Intervolve (Pty) Ltd* [2015] 3 BLLR 205(CC).)
- [8] Secondly, the application for default judgment discloses no cause of action that is justiciable by this court. In so far as the applicant contends that the respondent has committed an unfair labour practice, disputes of that nature must necessarily be determined by arbitration either in the CCMA or a bargaining council with jurisdiction (see s 191). Section 157 (5) provides that where the Act requires a dispute to be determined by arbitration, this court has no jurisdiction.
- [9] In any event, there is no merit to the applicant's claim. In essence, he states that he voluntarily resigned from the respondent's employ, and that he now wishes to be re-employed. In the absence of any refusal by an employer to re-employ an employee as provided in terms of an agreement (see 186 (2) (c)), the applicant has no right to any position in the respondent's establishment, either on the basis of the unfair labour practice provisions of the Act or any other. There is no agreement between the applicant and the respondent (or any other party for that matter) that provides for the applicant's reinstatement. The memorandum on which the applicant relies is no more than an internal directive on guidelines to be applied when former employees apply for vacant posts within the department. The policy is not an invitation to apply for vacant posts, nor were there any vacant posts for which the applicant applied.
- [10] For the above reasons, the applicant's prospects of success are non-existent and the application for condonation accordingly stands to be granted, and the application for default judgment dismissed. In relation to costs, the court is

ordinarily reluctant to make orders for costs against individual employees who pursue what they perceive to be their rights, in good faith. I have serious doubts about the applicant's good faith. He is clearly aware of the hopeless nature of his claim, yet he chose to persist with it. The opposition to his claim has been funded by the taxpayer. In these circumstances, the interests of the requirements of the law and fairness would require that the applicant pay the respondent's costs. The only reason that inclines me to make no order as to costs is the respondent's failure to act with the required degree of diligence

I make the following order:

1. The late filing of the notice of opposition and answering affidavit in the application for default judgment is condoned.
2. The application for default judgment is dismissed.

André van Niekerk
Judge

REPRESENTATION

For the applicant: In Person

For the respondent: Adv. T A Phefadu instructed by State Attorney.